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No. 82-1579

IN THE

Supreme Court of the United States

October Term, 1982

HAYFIELD NORTHERN RAILROAD COMPANY, INC., *Appellant,*

and

STATE OF MINNESOTA, *Appellant/Intervenor,*

v.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, *Appellee.*

On Appeal From the United States Court of Appeals for the Eighth Circuit

RESPONSE OF APPELLEE TO MEMORANDUM FOR THE IOWA DEPARTMENT OF TRANSPORTATION AS AMICUS CURIAE AND PROPOSED BRIEF IN SUPPORT OF JURISDICTIONAL STATEMENT ON BEHALF OF THE STATE OF WISCONSIN

Of Counsel:
THOMAS E. GLENNON
LINDQUIST & VENNUM
4200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 371-3211
JAMES P. DALEY
ANNE E. KEATING
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
One North Western Center
165 North Canal Street
Chicago, Illinois 60606
(312) 559-6072

EDWARD M. GLENNON
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 371-3211
STUART F. GASSNER
One North Western Center
165 North Canal Street
Chicago, Illinois 60606
(312) 559-6072
Attorneys for Appellee Chicago and North Western Transportation Company

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TABLE OF CONTENTS

	Page
Table of Authorities	i
Statement	1
Argument	2
Conclusion	4

TABLE OF AUTHORITIES

Federal Statutes:

49 U.S.C. §10905 (Supp. IV 1980) 2, 3

State Statutes:

Minn. Stat. §222.27 (1982) 4
Minn. Stat. §300.04 (1982) 4
Wis. Stat. Ann. §85.09(2) (West 1982) 3
Wis. Stat. Ann. §85.09(3) (West 1982) 3

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Appellant,

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STATE OF MINNESOTA,

Appellant/Intervenor,

v.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONSE OF APPELLEE TO MEMORANDUM FOR THE IOWA DEPARTMENT OF TRANSPORTATION AS AMICUS CURIAE AND PROPOSED BRIEF IN SUPPORT OF JURISDICTIONAL STATEMENT ON BEHALF OF THE STATE OF WISCONSIN

STATEMENT

This memorandum is submitted to supplement the matter contained in Appellee's Motion to Affirm, and will spe-

cifically respond to matters raised in the Memorandum for the Iowa Department of Transportation as Amicus Curiae (hereinafter "Iowa DOT Memorandum") and the Proposed Brief in Support of Jurisdictional Statement on Behalf of the State of Wisconsin (hereinafter "Wisconsin Brief") in this action.[1]

ARGUMENT

The decisions of the District Court and the Court of Appeals correctly concluded that, on the facts presented, 49 U.S.C. §10905 (Supp. IV 1980) preempts Minnesota condemnation law when a Minnesota railroad company attempts to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line (J.S.App.C, A-15; J.S.App.A, A-1 to A-2). The Iowa DOT Memorandum and the Wisconsin Brief, however, inappropriately extend the holdings and effects of the decisions of the courts below in an effort to enhance the substantiality of the narrow questions presented by this appeal.[2] This Court should not be distracted by the efforts of Iowa DOT and Wisconsin to inject extraneous issues and considerations into the Court's determination of the narrow issues presented by this appeal.

Iowa DOT and Wisconsin improperly attempt to portray the Court of Appeals' construction of 49 U.S.C. §10905 as a direct affront to a State's ability or effort to preserve local

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[1] The Iowa DOT Memorandum and the Wisconsin Brief were received by Appellee subsequent to the service and filing of Appellee's Motion to Affirm and Appendix to Motion to Affirm in this action.

[2] Iowa DOT and Wisconsin similarly attempted to magnify the significance attached to the contentions raised in connection with Appellant's and Appellant/Intervenor's unsuccessful petitions and suggestions for rehearing and rehearing en banc by their filing of amicus curiae statements with the Court of Appeals.

rail service (Iowa DOT Memorandum 3; Wisconsin Brief 4). Such a portrayal endeavors to present issues and considerations which are separate and distinct from the precise issues and considerations addressed by the District Court and the Court of Appeals, to wit, in the context of the Shippers Group's (i.e. Appellant's) participation in and virtual exhaustion of the procedures set forth in 49 U.S.C. §10905:

> (1) Whether 49 U.S.C. §10905 preempts Minnesota condemnation law when a Minnesota railroad company attempts to condemn the track and right of way of a properly abandoned rail line in order to continue rail service on that line; and
>
> (2) Whether Appellant's attempt to condemn the subject track and right of way constitutes an impermissible collateral attack on the Interstate Commerce Commission's determination of value of the track and right of way.[3]

The interfacing of 49 U.S.C. §10905 and a State's rail preservation program, such as the programs of the States of Iowa and Wisconsin, has not been the subject of the decisions of the courts below in this action.

The Iowa and Wisconsin statutory and constitutional authorities permitting State activity in rail preservation programs differ substantially from the purported power of Appellant to acquire Appellee's track and right of way for continued rail purposes.[4] The idiosyncracies of the Iowa and Wisconsin statutory and constitutional provisions per-

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[3] *See* Appellee's Motion to Affirm at i.

[4] *See, e.g.*, Wis. Stat. Ann. §85.09 (2) and (3) (West 1982) (J.S.App.T. A-66 to A-67), which provide that under Wisconsin's rail preservation program, only *abandoned* rail property may be acquired.

mitting State activity in rail preservation programs have no bearing on, and only serve to distort, the Court's review of the purported authority of Appellant to proceed under state condemnation authority which is accorded Minnesota railroad corporations to acquire property for railroad purposes.[1] The Iowa and Wisconsin statutory and constitutional authorities relating to such States' rail preservation programs are, therefore, properly excluded from this Court's consideration of the questions presented by this appeal.

CONCLUSION

The Iowa DOT Memorandum and the Wisconsin Brief inject extraneous issues and considerations which are not properly before this Court in its review of the decision of the Court of Appeals. Such issues and considerations serve only to distort the clarity of the narrow questions which were decided by the courts below, and are properly excluded from this Court's consideration in its review of the ques-

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[1] *See* Minn. Stat. §222.27 (1982) and Minn. Stat. §300.04 (1982) (J.S. 2 and 3, respectively).

tions presented by this case. On the facts presented, the Court of Appeals' decision is so eminently correct as to warrant summary affirmance by this Court.

Respectfully submitted,

EDWARD M. GLENNON
4200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 371-3211
STUART F. GASSNER
One North Western Center
165 North Canal Street
Chicago, Illinois 60606
(312) 559-6072
Attorneys for Appellee Chicago and North Western Transportation Company

Of Counsel:
THOMAS E. GLENNON
LINDQUIST & VENNUM
4200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 371-3211
JAMES P. DALEY
ANNE E. KEATING
CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY
One North Western Center
165 North Canal Street
Chicago, Illinois 60606
(312) 559-6072

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